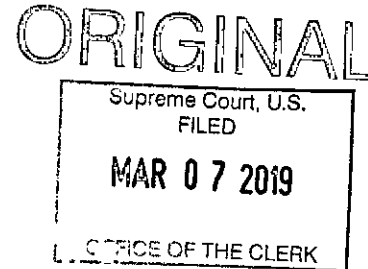


No. 18-8401

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**In The  
SUPREME COURT OF THE UNITED STATES**

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**JUSTIN D. BURGESS,**  
PETITIONER (*Defendant Below*)

v.

**WILMINGTON SAVINGS FUND SOCIETY, FSB**  
RESPONDENT (*Plaintiff Below*)

---

On Petition for a Writ of Certiorari  
To the Court of Appeals for the Fifth District of Texas at Dallas  
(A State Court of the State of Texas)

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**PETITION FOR A WRIT OF CERTIORARI**

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---

**QUESTIONS PRESENTED**

1. Is it an error and an impermissible denial of due process of law and equal protection of law for a court to ignore its own rules which would impose an automatic stay on a lawsuit and then to grant judgment against the aggrieved party?

**LIST OF PARTIES AND COUNSEL**

Petitioner/Appellant, Justin D. Burgess, hereby certifies that the following is a complete list of parties, attorneys, and any other persons who have any interest in the outcome of this lawsuit:

**Petitioner/Appellant:** Justin D. Burgess, *Pro Se*

**Contact Mr. Burgess In Care of Appellant's Trial Counsel:**

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**CITATIONS TO THE OPINIONS BELOW**

The only opinion below is the opinion of the Court of Appeals for the Fifth District of Texas at Dallas. It is reported at the following citation:

*Justin D. Burgess v. Wilmington Savings Fund Society, FSB*, \_\_\_ SW3d \_\_\_  
(Texas 5<sup>th</sup> Court of Appeals, Case Number 05-17-00654-CV - Dallas, May 5, 2018).

**JURISDICTION**

The opinion of the Court of Appeals for the Fifth District of Texas at Dallas was issued on May 8, 2018. A Petition for Review (PR) was timely filed with the Supreme Court of Texas on September 5, 2018. That court, the state court of last resort, denied the Petition for Review on October 12, 2018. A motion for rehearing was timely filed in the Supreme Court of Texas, and that motion for rehearing was denied on December 7, 2018. Ninety days from that date is Thursday, March 7, 2019. Under Supreme Court Rule 13.1, this Petition for Writ of Certiorari is timely since it is filed, or deemed filed, on or before that date. This Court has jurisdiction based on the denial of equal protection of the law and the denial of due process of law by the State of Texas. The judgment in the relevant trial court (the second trial court) was signed and entered on March 9, 2017.

The jurisdiction of the United States Supreme Court is invoked under 28 USC §1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment V

U.S. Constitution, Amendment XIV

STATUTES

28 USC §1257(a)

RULES

Texas Rules of Civil Procedure, Rule 4

Texas Rules of Civil Procedure, Rule 736.11

Texas Rules of Appellate Procedure, Rule 4

Federal Rules of Civil Procedure, Rule 6

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Supreme Court Rule 30

STATEMENT OF THE CASE

This Petition For Writ Of Certiorari arose out of a wrongful foreclosure case.

Under Texas law, by statute, foreclosure sales are held on the first Tuesday of each month.

The Texas Rules of Civil Procedure (TRCP's) are promulgated by the Texas Supreme Court and are applicable in all civil courts in the State of Texas. **TRCP Rule 4** is a rule expanding the time for an act to be performed if the deadline for the act falls on a Saturday, Sunday, or legal holiday. (It is functionally identical to the analogous provisions in TRAP Rule 4, FRCP Rule 6, FRAP Rule 26, and Supreme Court Rule 30. Relevant portions of these rules are reproduced in the Appendix.) **TRCP Rule 736** governs certain foreclosure cases.

Rule 736 contains a provision, Rule 736.11, which provides for an **automatic stay of any foreclosure proceeding** if a lawsuit is filed in state district court putting "in issue any matter related to the origination, servicing, or enforcement of the loan agreement, contract, or lien sought to be foreclosed prior to 5:00 p.m. on the Monday before the scheduled foreclosure sale."

TRCP Rule 4 extends the deadline for the filing of such a lawsuit until the end of the day on the Tuesday of a foreclosure sale if the preceding day, Monday, is a holiday. (Note that under Rule 4, even a lawsuit filed on Tuesday after a foreclosure sale is held is considered timely filed.)

Such was the case on Monday, September 5, 2016, which was Labor Day, a federal and state holiday. TRCP Rule 4 extended the deadline to file a case in a district court to effect an automatic stay of the foreclosure sale. Mr. Burgess, the Petitioner / Appellant here, did file such a district court lawsuit *pro se* and served it upon the trustee scheduled to conduct the foreclosure sale on Tuesday morning, September 6, 2016, prior to the time the foreclosure sale was held. Thus, the automatic stay provided by TRCP Rule 736.11 was in effect, and the trustee conducting the foreclosure sale had actual knowledge thereof, but he proceeded with the foreclosure sale nonetheless.

An eviction case followed in the first trial court, Justice Court, Precinct 5, Place 1, in Dallas County, Texas. On December 5, 2016, Justice of the Peace Sara Martinez accepted the above argument and dismissed the eviction case based on Rule 4 and the automatic stay triggered by Rule 736.11. She did this by signing a judgment for the defendant on December 5, 2016.

WSFS appealed that ruling to the second trial court, County Court At Law Number 2, Dallas County, Texas, for a trial de novo. Judge King Fifer,

in a trial lasting mere moments ruled in favor of WSFS, signing a judgment on March 9, 2017.

Mr. Burgess appealed that ruling to the Fifth Court of Appeals in Dallas, Texas; that court affirmed the second trial court by issuing its judgment and opinion on May 8, 2018. This was the only appellate court to date to hear the case on the merits.

Mr. Burgess then sought review by the Texas Supreme Court (the highest civil court in the Texas court system), which denied his Petition For Review by order dated October 12, 2018, and which further denied his motion for rehearing on December 7, 2018.

Mr. Burgess then filed this Petition For Writ of Certiorari seeking review by the Supreme Court of the United States.

Mr. Burgess contends that the actions of the Texas courts above the level of the Justice Court have denied him due process of law and equal protection of the law because the Texas courts have failed and refused at every turn to follow their own rules. This failure will, if not reversed, cost him possession and ownership of his personal residence.

**REASONS FOR GRANTING THE PETITION**

**Question 1:**                      Is it an error and an impermissible denial of due process of law and equal protection of law for a court to ignore its own rules which would impose an automatic stay on a lawsuit and then to grant judgment against the aggrieved party?

**Reasons for Granting The Petition:**

The U.S. Supreme Court should grant the petition for certiorari, and after briefing and argument (if called for by the Court) reverse and render judgment dismissing the case brought by Wilmington Savings Fund Society, FSB (plaintiff below, respondent here) against Justin D. Burgess (defendant below, petitioner here) and setting aside the purported foreclosure sale held on September 6, 2016.

Mr. Burgess timely filed a district court lawsuit which invoked an automatic stay of the foreclosure sale scheduled to be held by a trustee on September 6, 2016. The filing was timely due to the Texas Rules of Civil Procedure, Rule 4. The filing invoked the automatic stay provided by Texas Rules of Civil Procedure, Rule 736.11. (See Appendix L, Reporter's Record [RR], Page 12, Line 19 through Page 19, Line 20.)



The trustee unlawfully performed a trustee sale in violation of the automatic stay and purported to sell the subject property, (the Burgess personal residence), to the lienholder, Wilmington Savings Fund Society, FSB, (WSFS) the respondent here.

Subsequently, WSFS sued Burgess for eviction in a forcible detainer case. The first court to hear that case (a JP Court) did rule correctly and dismiss the case. WSFS appealed, and the second trial court erred and granted a judgment of possession in favor of WSFS. That is the judgment appealed from here.

The second trial court, the intermediate court of appeals, and the Supreme Court of Texas have all failed and refused to enforce their own rules, TRCP Rule 4 and TRCP Rule 736.11, which together automatically stayed the scheduled foreclosure sale and now require the dismissal of the case brought by WSFS.

The failure to follow and enforce TRCP Rules 4 and 736.11 violates the *Accardi* doctrine which requires that a forum follow its own rules or be found in violation of the aggrieved party's rights to due process of law and equal protection of the law under Amendment V and Amendment XIV. *Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954). *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957). Courts must follow their own rules, or the rule of law is lost — for everyone.

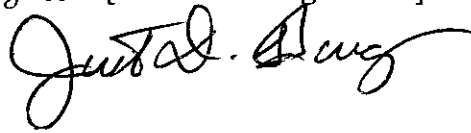
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

/s/ *Justin D. Burgess* [Electronic Signature]

Justin D. Burgess  
*Petitioner, Pro Se*  
March 6, 2019

A handwritten signature in black ink, appearing to read "Justin D. Burgess", written over the printed name and date.